

**REMARKS**

Claims 12-22 are currently pending in this application. In a telephone conversation between the Examiner and Applicant's representative, a provisional election was made with traverse to prosecute the invention of Group XII, including Fig. 17 which is covered by claims 12 and 18-22. Therefore, claims 13-17 were withdrawn from further consideration by the Examiner. Applicant hereby affirms the election of claims 12 and 18-22, but with traverse.

The Examiner has requested election and restriction to one of the claimed inventions (i.e., Groups I-XII) listed on pages 2 and 3 of the Office Action. Applicant hereby traverses the restriction requirement on the basis that no serious burden exists on the Examiner for examining claims 12-22 in a single application. The Examiner has not provided sufficient reasons to substantiate that the asserted claimed inventions depicted in Figs. 1-17 of the present application have either a separate classification, a separate status in the art, or require a different field of search. Therefore, Applicant respectfully requests that the restriction requirement be withdrawn and that claims 12-17 and 20-22 be examined in the present application. However, if this traversal is unsuccessful, Applicant reserves the right to prosecute non-elected claims 13-17 by way of a divisional application.

The Examiner has objected to the title of the invention as being non-descriptive and has required a new title that is "clearly indicative" of the invention. To overcome this objection, the title has been changed from "Container Tab" to --Flexible Container Tab --.

The Examiner has rejected claims 19-21 under 35 U.S.C. §112, first paragraph, for failing to comply with the written description requirement. The Examiner asserts that there is no support in the original disclosure for the language "the lever comprises at least two sleeves" as recited in the claims. Applicant respectfully disagrees. Support for

the language "the lever comprises at least two sleeves" can be found, for example, on page 5, lines 9-10 and 14-16 of the present specification and in Figs. 5 and 6 of the drawings. In view of the foregoing, reconsideration of and withdrawal of the rejection of claims 19-21 are respectfully requested.

The Examiner has rejected claims 12, 18, and 22 under 35 U.S.C. §102(b) for anticipation by Japanese Patent No. JP 5-305945 to Kubota. The Examiner asserts that the operating part in the Kubota patent is flexible. Claims 18 and 19 have been cancelled and the limitations therein have been incorporated into each of independent claims 12 and 22. Support for the amendments to the claims can be found, for example, in claims 18 and 19 and on page 2, line 37 to page 3, line 6 of the present specification.

The present invention as claimed in amended independent claim 12 is directed to a tab for a container having a wall for with a tear part for opening the container. The tab comprises a rigid lever part and a flexible operating part for operating the lever part. The rigid lever part comprises at least two sleeves in which the ends of a strand are fixedly arranged. The lever part is connectable to the tear part and defines a plane. The flexible operating part is movably connected to the lever part such that the operating part can be moved out of the plane of the rigid lever part. Claim 22 recites a container having the tab of claim 12.

Figs. 1-6 of the Kubota patent show a push tab 3 having a bending back part 2 and a pull-up part 6. The tab 3 is attached to an opening of a drinking port on a lid of a can. When opening the can, the bending back part 2 is pressed by a finger wherein a leading end of the pull-up part 6 on the opposite side is lifted at an angle corresponding to the bending back part 2. Figs. 3 and 4 of the Kubota patent specifically show the pull-up part 6 lifted at an angle corresponding to the bending back part 2. Therefore, tab 3 of the Kubota patent is

not flexible (i.e., capable of bending). Although Figs. 5 and 6 show a curved tab, this curved tab also cannot bend or flex. In addition, Figs. 1-6 of the Kubota patent does not show a tab having sleeves for fixedly arranging ends of strand. In view of the above, the Kubota patent does not teach or suggest a flexible operating part or a lever part comprising at least two sleeves in which the ends of a strand are fixedly arranged as recited in amended claims 12 and 22. Accordingly, reconsideration and withdrawal of the rejection of claims 12 and 22 are respectfully requested.

The Examiner has rejected claims 12, 18, 21, and 22 under 35 U.S.C. §102(b) for anticipation by Japanese Patent No. JP 8-119276 to Morita et al. (hereinafter, "the Morita patent"). As discussed above, independent claims 12 and 22 have been amended to include the limitations found in cancelled claims 18 and 19. Claim 21 has been amended to depend from claim 12.

The Morita patent discloses a tab for opening a can having a first lever 1 pivotally connected at a connection part 3 to a second lever 4 shown in Fig. 1. Figs. 7 and 8 of the Morita patent also show the operation of the tab which connects two levers together, wherein the first lever is pushed down across a support point 2, thus causing the second lever to initially break the push-in closure of the can as shown in steps (a)-(c) of Fig. 7. The second lever is then pulled upward to complete the opening of the can as shown in steps (d)-(f) of Fig. 8. However, the Morita patent does not teach or suggest the lever part comprising at least two sleeves in which the ends of a strand are fixedly arranged as recited in amended claims 12 and 22. For the reasons discussed above, reconsideration and withdrawal of the rejection of claims 12, 21 and 22 are respectfully requested.

The Examiner has rejected claims 12, 18, and 22 under 35 U.S.C. §102(e) for anticipation by U.S. Patent Application Publication No. U.S. 2002/0125251 A1 to Dickie et

al. (hereinafter, "the Dickie patent application"). The filing date of the Dickie patent application is March 12, 2001. The present application claims priority under 35 U.S.C. §119 to corresponding European Patent Application No 00.203965.9, filed November 10, 2000, which precedes the filing date of the Dickie patent application. Withdrawal of the rejection of claims 12 and 22 is respectfully requested.

The Examiner has rejected claims 19-22 under 35 U.S.C. §103(a) for obviousness over the Morita patent, in view of Japanese Patent No. JP 11-342941 to. Kuno. The Examiner asserts that the Morita patent teaches the claimed invention except for the flexible operating portion having ends in two sleeves of the operating portion. Further, the Examiner contends that the Kuno patent teaches the flexible operating portion having ends in two sleeves of the lever portion. Therefore, the Examiner concludes that it would have been obvious to one of ordinary skill at the time the invention was made to substitute the flexible plastic cord of the Kuno patent for the hinged operating portion of Morita patent, thus providing a more flexible and movable operating portion. Applicant respectfully disagrees with the Examiner's conclusion.

The Morita patent has been described above. The Kuno patent discloses an attachable cap for a pull-top can that comprises a main body 10 having a cord 13 attached to the body 10. The body 10 is inserted onto a tab in order to facilitate pulling of the tab, thus opening the can (see Figs. 1-8).

There is no teaching, suggestion or motivation to substitute the flexible plastic cord 13 disclosed in the Kuno patent for the hinged operating portion (second lever) disclosed in the Morita patent. If the second lever of the Morita patent were replaced with a flexible plastic cord, the intended function of the tab in the Morita patent would be destroyed. The function of the tab in Morita patent is to push a lever down in order to initially open the push-

in closure of a can, thus eliminating a pull force in order to initially break the push-in closure of a can. It is this initial breaking of the push-in closure that makes opening a can difficult. By replacing the second lever of the Morita patent with the cord 13 of the Kuno patent, the first three steps (a)-(c) shown in Fig. 7 of pushing down on the second lever across a support point 2 to initially break the push-in closure would be non-existent. Therefore, the intended function of the tab in the Morita patent would be destroyed. In view of the above, there is no teaching, suggestion or motivation to modify the lever in the Morita patent with the cord 13 in the Kuno patent and arrive at the claimed invention as recited in claims 12 and 22. Reconsideration and withdrawal of the rejection of claims 20-22 are respectfully requested. Claim 19 was cancelled, as discussed above.

#### NEW CLAIMS

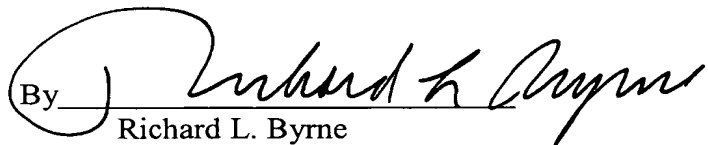
New claims 23 and 24, which depend from amended independent 12, have been added to specify that the flexible operating part comprises a plastic and the rigid lever part comprises metal. Support for new claims 23 and 24 can be found, for example, on page 7, lines 4-7 of the present specification.

CONCLUSION

In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the rejections and allowance of claims 12 and 20-22 and new claims 23 and 24. Also, Applicant respectfully requests that the restriction requirement be withdrawn and non-elected claims 13-17 be examined in this application. Because claims 13-17 depend directly or indirectly from and add further limitations to claim 12, they should likewise be in condition for allowance.

Respectfully submitted,

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